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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>NORMA O. MCCAULEY,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>SHAMROCK FOODS COMPANY,</p> <p>Defendant - Appellee.</p>
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No. 07-15016

D.C. No. CV-05-04253-FJM

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
Frederick J. Martone, District Judge, Presiding

Submitted February 18, 2009\*\*

Before: BEEZER, FERNANDEZ, and W. FLETCHER, Circuit Judges.

Norma O. McCauley appeals pro se from the district court's summary judgment in her action claiming race discrimination in violation of Title VII and 42 U.S.C. § 1981. We have jurisdiction under 28 U.S.C. § 1291. We review de novo

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

a grant of summary judgment. *Universal Health Servs., Inc. v. Thompson*, 363 F.3d 1013, 1019 (9th Cir. 2004). We affirm.

The district court properly determined that McCauley, who is African-American, failed to establish a prima facie case of race discrimination under either Title VII or 42 U.S.C. § 1981, because the position for which she applied was filled by an African-American woman. *See St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 506 (1993) (stating elements of prima facie case of racial discrimination, including filling position with an individual who is not from a racial minority).

The district court also properly determined that Shamrock timely removed McCauley's action to federal court. *See* 28 U.S.C. §§ 1446(b), 1447(c).

Appellant's motion to supplement the record is denied.

Appellee's motion for attorneys' fees is denied.

**AFFIRMED.**